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April 8, 2021

VIA ECF AND EMAIL

The Honorable Wendy Beetlestone, U.S.D.J.
United States District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1797

**Re: *Andrew J. Okulski v. Carvana, LLC et al.*,
U.S.D.C., E.D. Pa., No. 2:20-cv-01328-WB**

Dear Judge Beetlestone:

We write on behalf of Defendant Carvana, LLC (“Carvana”) in the above-referenced matter to inform the Court of a recent development impacting the pending April 1, 2021 joint request (Dkt. 46) to modify the pretrial and trial dates in this matter. The parties seek to modify the pretrial and trial dates based on Plaintiff’s pending reconsideration motion (Dkt. 45), which seeks to modify the claims subject to a trial. Events since April 1 reinforce that proceeding with the current pretrial schedule, including the rapidly approaching April 12, 2021 deadline for Carvana to file a pretrial memorandum, could prejudice the parties and lead to an inefficient waste of resources.

First, commencing last night and through this morning, Plaintiff produced an additional 1,194 pages of documents that had not previously been produced in this case. No explanation was provided for this last-minute production two business days before Carvana’s deadline to designate trial exhibits in its pretrial memorandum. The late production provides insufficient time for Carvana to consider the impacts of the new material on trial strategy, including exhibit and witness selection.

Second, on April 5, 2021, Plaintiff filed a pretrial memorandum designating 99 exhibits and 27 witnesses. The final exhibit list (which departed substantially from prior versions) was circulated only hours before the pretrial submission, providing insufficient time for Carvana to convey objections. Several of the exhibits were not produced at all (as exhibits or through discovery), and at least five exhibits remain unproduced (specifically, Exhibits 71 through 74 and Exhibit 87) as of the date of this letter. At the same time, Plaintiff raises a host of surprising legal issues, such as briefing entirely new legal theories (e.g., unjust enrichment, promissory estoppel, and implied warranty) which were not even pleaded as claims in any of the three iterations of Plaintiff’s complaint. The sprawling injection of new documents and factual and legal issues

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renders it particularly difficult for Carvana to adequately respond within the one-week timeframe under the current schedule.

Finally, Carvana is concerned about the potential prejudice associated with Plaintiff's unproduced trial exhibits and belated production this close to Carvana's submission of its own pretrial memorandum. The parties previously met and conferred and have agreed, subject to Court approval, to the ultimate relief sought in this submission—i.e., to modify the current pretrial and trial deadlines. Carvana submits that these latest developments further warrant an extension of the date for pretrial submissions so that Carvana may properly assess these documents and their impact on trial strategy, including by modifying the April 12, 2021 pretrial memorandum date by at least twenty-one (21) days.

Should the Court have any questions or concerns, we will make ourselves available at the Court's convenience for a conference call. We thank the Court for its time and consideration of these additional materials.

Respectfully submitted,

/s/ Craig M. Flanders

Craig M. Flanders

cc: All counsel of record (via ECF)